

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Case No. 24-35266
Trinity Excavators, LLC,)	
)	
Debtor.)	Chapter 11
)	
In re:)	
)	Case No. 24-35267
TE Construction Group, LLC)	
)	
Debtor.)	Chapter 11
)	

**APPLICATION TO EMPLOY CAROTHERS & HAUSWIRTH LLP
AS COUNSEL FOR TRINITY EXCAVATORS, LLC AND
TE CONSTRUCTION GROUP, LLC, NUNC PRO TUNC**

THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE APPLICATION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 24 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE APPLICATION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE APPLICATION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE APPLICATION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MOTION ON DECMEBER 18, 2024, AT 11:00 A.M. (CENTRAL TIME) IN COURTROOM 403, 515 RUSK, HOUSTON, TX 77002.

Trinity Excavators, LLC and TE Construction Group, LLC (collectively "Debtors"), through their proposed undersigned counsel, file this *Application to Employ Carothers & Hauswirth LLP as Counsel for Trinity Excavators, LLC, and TE Construction Group, LLC, Nunc Pro Tunc* (the "Application"), pursuant to 11 U.S.C. §§ 327 and 328, and Rule 2014 of the Federal

Rules of Bankruptcy Procedure. In support of the Application, Debtors rely upon and incorporate by reference the Declaration of Brian Buttry in Support of Chapter 11 Petitions and Preliminary Motions (the "Buttry Declaration"), averring as follows:

JURISDICTION AND VENUE

1. On November 6, 2024 (the "Petition Date"), Trinity and TE each filed petitions for relief under Chapter 11 (the "Chapter 11 Cases") of the United States Bankruptcy Code 11 U.S.C. §§101-1501 *et seq.* (the "Bankruptcy Code") (Trinity Docket No. 1 and TE Docket No. 1).

2. On November 18, 2024, the Declaration of Brian Buttry in Support of Chapter 11 Petitions and Preliminary Motions was filed in both cases (Trinity Docket No. 13 and TE Docket No. 12). All defined terms in the Buttry Declaration will be given the same meaning in this Motion.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are Sections 327(a), 328(a), and 329 of the Bankruptcy Code, Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules").

BACKGROUND

5. Debtors remain in possession of their assets and continue to operate and manage their businesses as "debtors-in-possession" pursuant to Sections 1107(a) and 1184 of the Bankruptcy Code.

6. Filed concurrently herewith is Debtors' Application to Employ Forshey & Prostok, LLP as Local Counsel for Trinity Excavators, LLC and TE Construction Group, LLC to act as local counsel ("Local Counsel") for Debtors.

7. Filed concurrently herewith is Debtors' Application to Employ Ascend Business Services, LLC as Financial Advisor for Trinity Excavators, LLC and TE Construction Group, LLC to act as financial advisor ("Financial Advisor") for Debtors.

RELIEF REQUESTED

8. Debtors expect various legal issues to arise in the administration of these Chapter 11 Cases that will require the services of experienced and competent bankruptcy counsel.

9. Debtors seek to employ Patrick W. Carothers, Gregory W. Hauswirth, and the law firm of Carothers & Hauswirth LLP ("C&H") pursuant to Section 327(a) of the Bankruptcy Code.

10. Debtors have selected Patrick W. Carothers, Gregory W. Hauswirth, and C&H as their counsel because of their expertise in bankruptcy and restructuring matters. The attorneys at C&H have represented debtors, creditors, and creditors' committees in numerous bankruptcy proceedings throughout the country. Further, as part of its general business strategy, C&H and its attorneys, for the past 15 years, have provided professional counsel to small businesses throughout the United States with less than \$30 million in annual revenue, such as Debtors. Most importantly, C&H was initially retained by Trinity Excavators, LLC on June 29, 2023, to provide restructuring counsel, as Trinity dealt with severe financial distress. When Trinity ceased its business operations in September of 2023, C&H was retained by TE to assist it with its day-to-day legal issues, including contract review, collection issues, and issues raised against TE by the creditors of Trinity. Paramount to C&H's representation was the preservation of TE's long-term viability. To that end, C&H advised Trinity and TE in connection to filing this bankruptcy. C&H will not provide services that are duplicative of Local Counsel or any other professional in these Chapter 11 Cases.

11. The professional services that Patrick W. Carothers, Gregory W. Hauswirth, and C&H are to render include the following:

- a. Advising Debtors with respect to their powers and duties as debtors-in-possession in the continued operation of their businesses and management of their property;
- b. Assisting Debtors in negotiations and documentation of financing arrangements, debt restructuring, and cash collateral orders;
- c. Assisting Debtors with the preparation of their Schedules, Statement of Financial Affairs, Applications, Answers, Orders, reports, and any other necessary legal pleadings and papers;
- d. Providing legal services to Debtors in connection with the formulation and implementation of a plan of reorganization; and
- e. Performing all other legal services for Debtors as debtors-in-possession, which may be necessary.

12. Filed concurrently herewith and incorporated herein is the Declaration of Patrick W. Carothers submitted pursuant to Bankruptcy Rules 2014 and 2016 (the "Carothers Declaration"). The Carothers Declaration filed concurrently herewith has been executed on behalf of C&H in accordance with the provisions of Sections 327, 328, 329, and 504 of the Bankruptcy Code, Bankruptcy Rule 2014, Local Rules 2014-1 and 2016-1, and U.S. Trustee Guidelines. To the best of Debtors' knowledge, information, and belief, statements regarding the matters set forth herein are based and made in reliance upon the Carothers Declaration.

13. To the best of Debtors' knowledge and except as provided in the Carothers Declaration, Patrick W. Carothers, Gregory W. Hauswirth, and C&H have no connection with any creditors of Debtors, except that C&H has represented Brian Buttry and Dana "Shelli" Buttry from time to time since C&H's representation of Trinity commenced on June 29, 2023. Typically, these representations were in connection with attempts by creditors of Trinity to collect such obligations directly from Brian Buttry and Shelli Buttry. C&H no longer represents Brian Buttry and Shelli Buttry, and they have retained local counsel, being Michael J. Hammond of McArthur, Boedeker

& Hammond in Cleburne, TX, and Bradley D. McCormack of The Sader Law Firm in Kansas City, MO.

14. To the best of Debtors' knowledge, Patrick W. Carothers, Gregory W. Hauswirth, and C&H are "disinterested" persons, as that term is defined in Section 101(14) of the Bankruptcy Code. Patrick W. Carothers, Gregory W. Hauswirth, and C&H and its attorneys neither represent nor hold an interest adverse to that of Debtors or their bankruptcy estates.

15. The terms of employment of C&H, as agreed to by Debtors and subject to approval of the Court, are that attorneys and other personnel within C&H will undertake this representation at their standard hourly rates, plus reimbursement of any actual and necessary expenses incurred including but not limited to postage, overnight courier services, and such other charges, which are customarily charged to C&H's clients. C&H's current hourly rates as of January 1, 2024, for the professionals and paraprofessionals that will be working on this matter are as follows:

Attorney Time (Partners and Associates)	\$300.00 to \$525.00/hour
Paralegals and Law Clerks	\$100.00 to \$150.00/hour

16. These hourly rates are subject to periodic adjustments to reflect economic and other conditions usually on January 1st of each year.

17. C&H will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the foregoing legal services.

18. C&H intends to apply to the Court for compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and orders of this Court. In the event the Application is approved, Debtors reserve the right to request the implementation of interim compensation procedures with respect to fees

and expenses incurred by C&H in the course of its representation of Debtors in these Chapter 11 Cases; however, any such additional request will be made by separate motion.

19. Prior to the Petition Date, C&H received a retainer of \$45,000 from Debtors (the "Retainer"), in contemplation of and in connection with these Chapter 11 Cases, including restructuring and bankruptcy advice, the preparation of the requisite petitions, pleadings, exhibits, and lists relating to the commencement of these Chapter 11 Cases, and in the events reasonably anticipated to occur in these Chapter 11 Cases. A total of \$25,625.00 was applied from such Retainer prepetition and paid in the ordinary course of business. The remaining unused balance of the Retainer as of the Petition Date was \$19,375.00. The unused balance of the Retainer will be held in trust by C&H and will be available to be applied to post-petition services, as approved by the Court.

20. C&H will submit interim and final applications for compensation to the Court for compensation for services rendered and any related expenses incurred post-petition in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any relevant orders of this Court.

21. To the best of C&H's knowledge, no promises have been made by C&H or by any member, partner, counsel, or associate thereof as to compensation in connection with these Chapter 11 Cases other than in accordance with the provisions of the Bankruptcy Code. C&H has no agreement with any other entity to share with such entity compensation received by C&H in connection with these Chapter 11 Cases.

22. Debtors submit that C&H's employment would be in the best interest of Debtors' bankruptcy estates.

23. C&H reserves the right to file an amended Application under Rule 2014 upon filing the completed petition and as may become necessary.

NO PRIOR REQUEST

24. No prior motion for the relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, Debtors respectfully request that the Court enter an Order, substantially in the form attached hereto, authorizing and approving Debtors' engagement and employment of Patrick W. Carothers, Gregory W. Hauswirth, and Carothers & Hauswirth LLP to represent them in these Chapter 11 Cases under Chapter 11 of the Bankruptcy Code, *nunc pro tunc*, as of November 6, 2024, and grant such other and further relief as the Court may deem necessary and proper.

Date: November 18, 2024

Respectfully submitted,

CAROTHERS & HAUSWIRTH LLP

FORSHEY & PROSTOK LLP

By: /s/ Gregory W. Hauswirth
Patrick W. Carothers (PA ID No. 85721)*
Gregory W. Hauswirth (PA ID No. 307482)*
Foster Plaza 10
680 Andersen Drive, Suite 230
Pittsburgh, PA 15220
Telephone: 412.910.7500
Facsimile: 412.910.7510
pcarothers@ch-legal.com
ghauswirth@ch-legal.com

/s/ Harrison A. Pavlasek
Harrison A. Pavlasek
State Bar No. 24126906
777 Main St., Suite 1550
Fort Worth, TX 76102
Telephone: 817-877-8855
Facsimile: 817-877-4151
hpavlasek@forsheyprostok.com

**pro hac vice pending*

*Proposed Attorneys for Debtors, Trinity
Excavators, LLC and TE Construction Group,
LLC*

*Proposed Attorneys for Debtors, Trinity
Excavators, LLC and TE Construction Group,
LLC*